IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24671 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RASHMI SAKARCHAND SHAH & 1 - Petitioner(s)

Versus

POST MASTER & 2 - Respondent(s)

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Appearance :

MR AS ASTHAVADI for Petitioner(s) : 1 - 2.

MR PJ MALKAN for Respondent(s) : 1 - 2.

RULE NOT RECD BACK for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/02/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioners have prayed for appropriate writ, order and/or directions directing the respondents – Postal Authority to pay the interest accrued as promised and admissible on the investment of Rs.2,00,000 (Rupees Two Lacs only) made by the petitioners in Kisan Vikas Patra dtd.25/4/1998 as mentioned in the Kisan Vikas Patra Nos.56-CC- 555444 to 56-CC-555463 till 6/11/2004 (date of refund of principal amount) and interest thereon at the rate of 18% from the date of refund of principal amount till realisation.

2. It is the case of the petitioners that

the petitioenrs invested a sum of Rs.2 Lacs by way of purchasing total 20 Kisan Vikas Patra of Rs.10,000-00 (Rupees Ten Thousand only) each from Navrangpura Post Office bearing Nos.56-CC-555444 to 56-CC-555463 on 25/4/1998. It is the case of the petitioners that the said Certificates had a maturity date of 25/10/2003 and considering the maturity value of each of the Certificate of Rs.20,000-00, the total maturity value comes to Rs.4,00,000-00 (Rupees Four Lacs only). It is the case of the petitioners that on maturity, the petitioners approached the respondent by letter dtd.11/12/2003 requesting to pay the amount so matured in favour of the petitioners. However, even after the said communication also, they approached the office of the respondent for inquiring about the payment of the amount. However, on oral query from the authority, another letter dtd.15/12/2003 along with the copies of all the Certificates of Kisan Vikas Patra and related documents were also

submitted to the respondents, wherein it was mentioned that the petitioner NO.1 had invested the amount in the said scheme through his Power of Attorney Holder. However, as the maturity amount was not paid, the petitioners again wrote letters dtd.12/1/2004 and 29/4/2004 requesting to repay the amount with interest. It appears that thereafter, the petitioners came to be served with one letter dtd.30/4/2004 issued by the Assistant Director of Postal Service (PC), delivered to them by hand delivery mentioning that “the approval of the Chief Post Master General, Gujarat Circle, Ahmedabad is hereby accorded to regularise the investment made by the petitioners and it was ordered to refund the amount invested by the petitioners.” It is the case of the petitioners that the petitioners were issued a cheque for an amount of Rs.2 Lacs only i.e. the amount invested and not paid the interest. However, the petitioners accepted the said amount with objection. As the petitioners

are not paid the interest on the invested amount, which comes to Rs.2 Lacs, the petitioners have preferred the present petition for the aforesaid relief.

3. Mr.Asthavadi, learned advocate appearing on behalf of the petitioner has vehemently submitted that once the petitioner invested the aforesaid amount in the Kisan Vikas Patra, the petitioners are entitled to the amount with interest and against investment of Rs.2 Lacs, the petitioners were entitled to Rs.4 Lacs. However, the petitioners are not paid the interest on the ground that the petitioner No.1 was Non-Resident Indian (hereinafter referred to as “NRI” for short) and as per the Kisan Vikas Patra Rules, NRI cannot purchase and/or invest in the Kisan Vikas Patra. It is submitted by him that at the relevant time when the petitioner purchased the aforesaid Kisan Vikas Patra, there was no such ban and even there was no column in

the application for purchasing / investing in the Kisan Vikas Patra, by which, the petitioners were required to mention as to whether they are NRI or not and, therefore, he has submitted that the action of the respondents in not paying the interest on the aforesaid amount is absolutely illegal and de-hors the provisions of the statute. He has relied upon the judgement of this Court dtd.24/3/2005 rendered in Special Civil Application No.3867 of 2004 wherein while deciding an identical case, this Court set aside the action of the respondent in not paying the interest on the ground that the investment could not have been made by the NRI in the said scheme. He has also relied upon the other two judgements namely judgement of the learned Single Judge of this Court rendered in Special Civil Application No.10866 of 1998 and in the judgement of the Division Bench of this Court in Letters Patent Appeal No.1509 of 2004 in Special Civil Application No.2877 of 2003. Relying upon the

aforesaid judgement and orders, he has requested to allow the present petition.

4. Mr.Malkan leanred Additional Standing Counsel for Central Government appearing on behalf of the respondents is absent and therefore, this Court has considered Affidavit-in-reply filed on behalf of the respondents. The sum and substance of the Affidavit-in-reply is that the petitioners have not disclosed in the application that the petitioner No.1, in whose name the Kisan Vikas Patra came to be purchased was NRI and has suppressed the said fact. It is also submitted that as per the rules and circulars, NRIs were not entitled to invest in the Kisan Vikas Patra and therefore, the petitioners are denied the interest. In support of their stand , they have relied upon the Post Office Small Savings Scheme Part-III, Savings Certificates Procedural Rules as contained in PO SB Manual Volume II with Clarifications Notes and

Specimen of Forms 2004. He has also relied upon the Post Office Small Savings Scheme Part-I, SB/SC Acts and Rules of All Savings Schemes except PPF Scheme with Clarification, Notes and Specimen Forms, 2000.

5. However, on going through the Affidavit-in-reply and the connected documents, it appears that no documents relating to Kisan Vikas Patra Rules and/or any Circular has been produced, by which, NRIs were banned from investing in Kisan Vikas Patra. Whatever has been relied upon by the respondents in the Affidavit-in-reply is of 2000 or 2004 and the same seems to be some clarification and/or noting from some book. Neither Rules nor Circulars with regard to the Kisan Vikas Patra is produced on record. Identical question came to be considered by this Court in Special Civil Application No.3867 of 2004, wherein this Court set aside the action of the respondents in denying the interest on the

investment on the ground that the investment was made by the NRIs under the said scheme. Even the Division Bench of this Court while rendering Judgement in Letters Patent Appeal No.1509 of 2004 in Special Civil Application No.2877 of 2003 directed the respondents to pay the interest, which was denied on the ground that the investments were made by the persons who were not authorised and/or who could not have invested the amount.

6. In absence of any Rules and/or Circular banning the investment by the NRIs in Kisan Vikas Patra and it appears that at the relevant time, when the petitioenrs invested in 1998, there was no such rule, by which, NRIs were banned from investing in Kisan Vikas Patra, and even the ocpy of the application / form has also not been produced to show as to whether in fact the petitioners were required to mention and/or clarify as to whether they are NRIs or not,

considering the same and for the reasons stated in the judgement and orders passed by this Court dtd.24/3/2005 in Special Civil Application No.3867 of 2004 with Civil Application No.62 of 2005, the present petition is required to be allowed and the actions of the respondents in denying the interest on the aforesaid Kisan Vikas Patra is required to be quashed and set aside.

7. For the reasons as aforesaid, the petition succeeds. The action of the respondents in denying the interest on the Kisan Vikas Patra dtd.25/4/1998 as mentioned in Kisan Vikas Patra Nos.56-CC0555444 to 56-CC-555463 is hereby quashed and set aside and the respondents are are directed to pay the interest and/or maturity amount of the aforsaid Kisan Vikas Patra i.e. Rs.2,00,000-00 (Rupees Two Lacs only) as expeditiously as possible, preferably within a period of FOUR WEEKS from the date of receipt of writ of this order. Rule is made absolute to the

aforesaid extent. However, there will be no order as to costs. D.S.Permitted.

(M.R.SHAH,J.)

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